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No. 98-262
In the Supreme Court of the United States
October Term, 1998

PERRY JOHNSON, et al,

Petitioners,

v.

EVERETT HADIX, et al,

Respondents.

PERRY JOHNSON, et al,

Petitioners,

v.

MARY GLOVER, et al,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the attorney fee provision of the Prison Litigation Reform Act, PLRA § 803, 42 USC § 1997e(d), applies to fees for services in litigation pending on the effective date of the PLRA.

PARTIES TO THE PROCEEDING

The parties are designated within the Petition for Writ of Certiorari.

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JURISDICTION

Petitioners adopt the jurisdictional statement set forth in the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

Petitioners adopt the statement of the case set forth in the Petition for Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE THE CONFLICT BETWEEN THE CIRCUIT COURTS OF APPEAL CONCERNING THE APPLICATION OF PLRA § 803 TO ATTORNEY FEES EARNED FOR SERVICES PERFORMED IN LITIGATION PENDING ON THE DATE OF ITS ENACTMENT.

Pursuant to Rule 15.8, Petitioners wish to apprise the Court of the following new case and other intervening matters not available at the time of the filing of their Petition for Writ of Certiorari.

In *Casey v. Blissett*, No. 98-257, twenty-eight (28) states, including the State of Michigan, have filed a joint amicus curiae brief in support of petitioner (the State of New York) seeking review of the decision of the Second Circuit Court of Appeals. As in the case at bar, *Casey v. Blissett* concerns the applicability of the Prison Litigation Reform Act's, P.L. 104-134, 110 Stat. 321 (PLRA), limits on attorneys' fees to cases pending on the date of enactment. Both the instant matter and New York's petition merit review by this Court to resolve and acknowledge the split between the circuits, and to address the important federal question raised in the cases. The circuits are sharply divided on whether 42 U.S.C. § 1997e(d) applies to fees for services in litigation pending on the effective date of the PLRA. Because of the great stakes involved, Petitioners need a clear resolution of the issue at bar.

On October 30, 1998, the United States Court of Appeals for the District of Columbia issued its Opinion in *Inmates of*

D.C. Jail v. Jackson, 1998 WL 754391 (D.C. Cir. 1998), and addressed the issue of whether the attorneys' fee provision of the PLRA applies to fees earned for work performed after the effective date of the Act if the litigation began before its enactment. The Court held that the attorney fee provisions of the PLRA apply to work done after the effective date of the PLRA, even if the case was filed before the effective date of the Act. The Court specifically rejected the position adopted by the Sixth Circuit Court of Appeals in *Hadix v. Johnson*, 143 F.3d 246 (6th Cir. 1998), the instant case, in which Petitioners are seeking review by this Court.

The Court of Appeals for the District of Columbia Circuit held in pertinent part:

> We do not find in the statute the plain meaning urged by the prisoners. There is simply nothing in the phrase "any action" that implies, let alone compels, a holding that the statute applies only to actions brought after the passage of the Act. Nor does the language compel resort to legislative history in an attempt to clarify its meaning. We are also not convinced that there is a negative inference to be drawn from a comparison of Sections 802 and 803 of the PLRA. Section 802 of the PLRA amends an entirely different statutory section, 18 U.S.C. § 3626. It is unsurprising that Congress would use differing language to amend different statutory provisions, and the absence of the Section 803 language simply will not bear the burden urged by the inmates. If this case involved a genuine question of retroactivity, that is, if the District were seeking to apply the cap to hours worked before the effective date of the statute, we might find the omission more compelling. But the District advances no such argument, and we join the Eighth Circuit in holding that retroactivity concerns are not implicated when the statute is applied to work performed after April 26, 1996, the date of passage of the PLRA. See *Williams v. Brimeyer*, 122 F.3d 1093, 1094 (8th Cir. 1997).
>
> When it is applied to work performed after the effective date of the Act, the PLRA raises none of the retroactivity concerns that require the analysis used by

> the district court because the statute creates present and future effects on present and future conduct, and has no effect on past conduct. Compare *Jensen*, 94 F.3d at 1203 (holding that the PLRA did not apply to pre-act work) with *Williams*, 122 F.3d at 1094 (holding that as applied to work performed after the passage of the Act, there is no retroactivity). The fees at issue were earned after the PLRA passed. The PLRA does not in this case upset vested interest because no right to a fee existed until the work was done. Because we find no retroactive effect, we need not consider the Supreme Court's extensive analysis of when to permit retroactive application. (citations omitted).

Id. at *3-4.

The Court of Appeals for the District of Columbia Circuit joins the Fourth, Eighth and Ninth Circuit Courts of Appeals which have held that the PLRA's attorney fee provisions apply to legal fees earned in actions pending on the date of enactment.

CONCLUSION

For the aforementioned reasons, and those previously set forth within their Petition for Writ of Certiorari, Petitioners respectfully urge this Court to grant certiorari and reverse the Court of Appeals.

Respectfully submitted,

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